

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

SHEILA A. GARD,
652 Westfield Way, Apartment # 3
Pewaukee, Wisconsin 53072,

CIVIL COMPLAINT

Civil Case No. 2:20-cv-256
Case Type: Personal Injury

COMMON GROUND HEALTHCARE COOPERATIVE,
120 Bishops Way, Suite 150
Brookfield, Wisconsin 53005

MOLINA HEALTHCARE OF WI, INC.,
11002 West Park Place
Milwaukee, Wisconsin 53224,

FOUNDERS INSURANCE COMPANY,
1350 East Touhy Avenue, Suite 200W
Des Plaines, Illinois 60018

v. Plaintiffs,

UNITED STATES OF AMERICA,
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001,

UNITED STATES POSTAL SERVICE,
470 L'Enfant Plaza SW
Washington, DC 20024, and

MARK CZECHOLINSKI,
2820 Fischer Drive
Burlington, Wisconsin 53105,

Defendants.

The Plaintiff, Sheila A. Gard, by and through her attorneys, GRUBER LAW OFFICES, LLC, by Attorney Eric M. Knobloch, complaining of the defendants herein, respectfully shows to this Court and alleges as follows:

JURISDICTION AND VENUE

1. These claims arise under the provisions of the Federal Tort Claims Act (FCTA), 28 U.S.C. §§ 1346(b), 2671-2680.

2. The Court has personal jurisdiction over the defendants herein pursuant to Rule 4(i)(1)(A)-(C) of the Federal Rules of Civil Procedures.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1402(b) as the plaintiff resides in this district and the acts and omissions complained of occurred in this district.

4. Pursuant to Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), the defendants' liability will be determined by the laws of the State of Wisconsin.

5. Pursuant to U.S.C. § 2674, the defendants' liability is in the same manner and to the same extent as provide individuals under like circumstances.

CONDITIONS PRECEDENT TO SUIT

6. Plaintiffs repeat and re-allege each and every allegation set forth above in paragraphs one (1) through five (5) with the same force and effect as though fully set forth herein.

7. Pursuant to 28 U.S.C. § 2401(b), within two years of the accrual of the Plaintiff, SHEILA A. GARD's claim, more specifically on or about September 27, 2018, the Plaintiff caused a Standard Form-95 "Claim for Damage, Injury, or Death" with particulars to be served, pursuant to 28 U.S.C. §§ 2401(b) and 2675 (c), upon the appropriate agency; namely, United States Postal Service (hereinafter "USPS").

8. At no time was any notice given that said claim was improper, or the "wrong" agency had received the claim.

9. On or about October 4, 2019, the USPS sent a letter via certified mail to the Plaintiff's counsel, Gruber Law Offices, LLC, advising that it denies the claim and that the Plaintiff, SHEILA A. GARD, has six months from the date of the denial to start an action in a District Court of the United States, and the instant action is started within six months of the denial of the claim.

THE PARTIES

10. Plaintiffs repeat and re-allege each and every allegation set forth above in paragraphs one (1) through nine (9) with the same force and effect as though fully set forth herein.

11. At all times mentioned, the Plaintiff, Sheila A. Gard, was at the time of the incident and currently is domiciled at 652 Westfield Way, Apartment # 3, in the City of Pewaukee, in the County of Waukesha, in the State of Wisconsin 53072.

12. At all times mentioned, the Plaintiff, COMMON GROUND HEALTHCARE COOPERATIVE, was at the time of the incident and currently is a foreign corporation with its principal place of business located at 120 Bishops Way, Suite 150, Brookfield, Wisconsin 53005.

13. At all times mentioned, the Plaintiff, MOLINA HEALTHCARE OF WI, INC., was at the time of the incident and currently is a foreign corporation with its principal place of business located at 11002 West Park Place, Milwaukee, Wisconsin 53224.

14. At all times mentioned, the Plaintiff, FOUNDERS INSURANCE COMPANY, was at the time of the incident and currently is a foreign corporation with its principal place of business located at 1350 East Touhy Avenue, Suite 200W, Des Plaines, Illinois 60018.

15. At all times mentioned, the Defendant, UNITED STATES POSTAL SERVICE (hereinafter "USPS"), was and is a Federal Agency pursuant to 28 U.S.C. § 2671.

16. At all times mentioned, the Defendant, UNITED STATES POSTAL SERVICE, is owned, operated and is under the direction and control of the United States Government and the Defendant, UNITED STATES OF AMERICA.

17. At all times mentioned, the Defendant, MARK CZECHOLINSKI, upon information and belief, is an adult currently domiciled at 2820 Fischer Drive, Burlington, Wisconsin 53105.

18. At all times mentioned, the Defendant, MARK CZECHOLINSKI, was the driver of the USPS truck, was an employee of the United States Government, The United States of America and/or the United States Postal Service at the time of the occurrence and was acting within the course and scope of his federal employment at the time of the occurrence which is described below and is the subject of the above captioned action.

19. At all times mentioned, the Defendant, MARK CZECHOLINSKI, was the driver of the USPS vehicle, was an employee of the United States Government, the United States of America and/or the United States Postal Service, was engaged in his employment, duty and/or an official capacity in the service of the United States.

**FIRST CAUSE OF ACTION: NEGLIGENCE AGAINST THE UNITED
POSTAL SERVICE AND THE UNITED STATES GOVERNMENT**

20. Plaintiffs repeat and re-allege each and every allegation set forth above in paragraphs one (1) through nineteen (19) with the same force and effect as though fully set forth herein.

21. On or about March 24, 2017, at approximately, 11:24 a.m., the Plaintiff, SHEILA A. GARD, was traveling southbound on Highway C at or near Britton Road, in the Town of Dover, in the County of Racine, in the State of Wisconsin.

22. On or about March 24, 2017, at approximately, 11:24 a.m., the Defendant, MARK CZECHOLINSKI, the driver of a USPS truck, was operating a USPS truck northbound on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin, while in the course of his employment with the United States Postal Service and/or United States of America with the permission, consent and/or in the business of the owner of the truck.

23. On or about March 24, 2017, at approximately, 11:24 a.m., the Defendant, MARK CZECHOLINSKI, the driver of a USPS truck, was in charge, managed, maintained, and controlled a USPS truck on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

24. Upon information and belief, prior to and on March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, was the owner of a certain truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

25. Upon information and belief, prior to and on March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, was the lessee that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

26. Upon information and belief, prior to and on March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, was the lessor that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

27. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, employed the Defendant, MARK CZECHOLINSKI, who drove

and operated a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

28. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, maintained a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

29. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, managed a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

30. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES POSTAL SERVICE, controlled a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

31. Upon information and belief, prior to and on March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, was the owner of a certain truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

32. Upon information and belief, prior to and on March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, was the lessee that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

33. Upon information and belief, prior to and on March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, was the lessor that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

34. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, employed the Defendant, MARK CZECHOLINSKI who drove and operated a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

35. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, maintained a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

36. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, managed a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

37. On March 24, 2017, at the time of the subject accident, the Defendant, UNITED STATES OF AMERICA, controlled a certain USPS truck that was being operated on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

38. On March 24, 2017, the roadways at Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin were and still are a public thoroughfare.

39. On March 24, 2017, at the time of the subject accident, the Plaintiff, SHEILA A. GARD, was operating her vehicle southbound on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

40. On March 24, 2017, at the time of the subject accident, the Defendant, MARK CZECHOLINSKI while he was driving and operating a USPS truck northbound on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin suddenly and without warning attempted to make a left hand turn and struck the vehicle driven by the Plaintiff, SHEILA A. GARD, causing her injury.

41. At the aforementioned place and time, the Defendant, MARK CZECHOLINSKI, attempted to make a left turn in front of the Plaintiff's vehicle in violation of Wis. Stat. § 346.89(1).

42. At the aforementioned place and time, the Defendant, MARK CZECHOLINSKI, created an emergency situation, while operating his vehicle in an inattentive, careless and erratic manner, caused a collision with the Plaintiff, SHEILA A. GARD's, vehicle, while he was in the course and scope of his employment with the Defendants, USPS and the UNITED STATES OF AMERICA.

43. The aforementioned accident and the subsequent injuries of the Plaintiff, SHEILA A. GARD, were solely and wholly to the careless, negligent, grossly negligent and reckless manner in which the defendants owned, drove, operated, managed, maintained, controlled and supervised the USPS truck at the aforementioned location and time.

44. The aforementioned accident and the injuries resulting therefore were due solely and wholly to the defendants' negligence, carelessness, recklessness, in the ownership, operation, maintenance, management, and control of their USPS truck referenced above; in failing and neglecting to properly maintain, repair and care for the aforementioned motor vehicle; in failing and neglecting to have the vehicle under reasonable and proper control; in failing and neglecting to keep proper lookout upon the roadways; failing and neglecting to follow the rules of the road; in failing and neglecting to yield the vehicle that had the right of way on the roadway; in operating the motor vehicle as to cut in front of the Plaintiff's lane of travel and creating an emergency situation of imminent collision; in so operating the motor vehicle as to cause the same to be in such a position on the roadway as to endanger the safety to other motorists on roadway as to endanger the safety to other motorists on the roadway; in operating said motor

vehicle at such speed at the aforementioned location as to cause the same to be of danger to other motorists, and in violating the statutes, ordinances and regulations, of which the Court will take judicial notice.

45. The aforementioned collision was caused solely by the negligence, gross negligence, carelessness and recklessness of the Defendants, without the Plaintiff in any way contributing thereto.

46. As a result of the Defendant, MARK CZECHOLINSKI, the driver of the USPS truck's recklessness, carelessness, negligence and gross negligence, the Defendants, the UNITED STATES OF AMERICA and the UNITED STATES POSTAL SERVICE, as the owners of the aforementioned USPS truck are vicariously liable for all of the injuries sustained by the Plaintiff.

47. The acts and/or omissions on the part of the Defendants do not fall into the "discretionary function" exception to the Federal Tort Claims Act.

48. The Defendants violated the application provisions of Wisconsin State Laws.

49. By reason of the aforementioned collision, the Plaintiff, SHEILA A. GARD, sustained serious and permanent injuries to her body, including but not limited to her back, chest, headaches, and shoulder. The Plaintiff, SHEILA A. GARD, also sustained injury to her neck requiring an anterior cervical discectomy and fusion of C5-C6 and future medical treatment, including a cervical fusion.

50. By reason of the negligence, gross negligence, carelessness and recklessness of the defendants, the Plaintiff, SHEILA A. GARD, was severely, seriously and permanently injured, bruised and wounded, suffered and will continue to suffer for some time physical pain and injury to her body and mind; further, the plaintiff still suffers and will continue to suffer

mental anguish, and became sick, sore, lame and disabled, and has been significantly deprived of the ability to enjoy life.

51. By reason of the foregoing, the Plaintiff, SHEILA A. GARD, was compelled to and did necessarily require medical aid, medication and attention, and did become liable for medical care received and will incur similar expenses in the future, and will require significant future medical care, medications and medical attention for the remainder of her life.

52. By reason of the foregoing, the Plaintiff, SHEILA A. GARD, has been unable to attend to her usual and customary activities and occupation in the manner required for a considerable period of time, has suffered and will continue to suffer the loss of earnings in the future.

53. By reason of the foregoing, the Plaintiff, SHEILA A. GARD, has sustained pecuniary and economic losses and will suffer such losses in the future.

54. The Plaintiff, SHEILA A. GARD, has no adequate remedy at law and continues to suffer irreparable harm as a result of the defendants' conduct, and has been injured and damaged in the amount of \$3,000,500.00.

**SECOND CAUSE OF ACTION: NEGLIGENT HIRING,
TRAINING, SUPERVISION AND RETENTION**

55. Plaintiff repeats and re-alleges each and every allegation set forth above in paragraphs one (1) through fifty-four (54) with the same force and effect as though fully set forth herein.

56. The defendants were negligent, grossly negligent, careless and reckless in the selection, hiring, training, supervision employment and retention of its employees and/or agents, and most specifically, the Defendant, MARK CZECHOLINSKI, the driver of the USPS truck.

57. Prior to March 24, 2017, the defendants failed and neglected to properly investigate prior to hiring and entrusting the Defendant, MARK CZECHOLINSKI, the driver of the USPS truck, while in the scope and course of his employment with the Defendants. with the USPS truck to operate and drive in Dover/Kansasville, Wisconsin.

58. Prior to and on March 24, 2017, the Defendants hired inadequate and incompetent help when they hired the Defendant, MARK CZECHOLINSKI and entrusted him with the USPS truck.

59. Prior to and on March 24, 2017, the defendants failed and neglect to properly and adequately train, supervise, and educate the Defendant, MARK CZECHOLINSKI the driver of the USPS truck, the driver of the USPS truck, while in the scope and course of his employment with the defendants, in the proper driving, operation, management, control, maintenance and/or supervision of vehicles, and more specifically, the truck such as the one that the Defendant, MARK CZECHOLINSKI was driving and operating on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin.

60. Prior to and on March 24, 2017, the defendants were negligent, grossly negligent, careless and reckless in entrusting the USPS truck to the Defendant, MARK CZECHOLINSKI the driver of the USPS truck, while in the scope and course of his employment with the Defendants.

61. The defendants' negligence, gross negligence, recklessness and carelessness was a substantial factor in bringing about the March 24, 2017, accident on Highway C at or near the 3800 block of South Britton Road, Kansasville, Wisconsin, causing injury to the Plaintiff, SHEILA A. GARD.

62. The Plaintiff has no adequate remedy at law and continues to suffer irreparable harm as a result of the defendants' conduct, and has been injured and damaged in the amount of \$3,000,500.00.

WHEREFORE, Plaintiff, SHEILA A GUARD, demands judgment against the Defendants, jointly and severally:

- 1) On the First Cause of Action: personal injury, pain and suffering, loss of enjoyment of life, medical expenses and a loss of earnings and benefits in the amount of Three Million Five Hundred and No/100 (\$3,000,500.00) Dollars, together with interest, costs and disbursements in this action;
- 2) On the Second Cause of Action: negligent hiring, supervision, training and retention in the amount of Three Million Five Hundred and No/100 Dollars, (\$3,000,500.00) together with interest, costs and disbursements in this action; and
- 3) Any other and further relief the Court may deem just and equitable.

GRUBER LAW OFFICES, LLC

Dated: February 18, 2020.

By: s/ Eric M. Knobloch
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